

## **Chapter 4. Documentation and Reporting For Regulatory Tiers, Permits, WDRs, and Plans**

### **Subchapter 4. Development of Closure/Post-Closure Maintenance Plans**

#### **21780. CIWMB - Submittal of Closure and Postclosure Maintenance Plans. (T14:§18267, §18268, and §18255)**

(a) Each submittal shall be certified by a registered civil engineer or a certified engineering geologist. Each submittal shall include:

(1) The preliminary or final closure and postclosure maintenance plans containing all of the elements specified under §21790 through §21840, as applicable.

(2) Updated or initial cost estimates for closure and postclosure activities to reflect the components and requirements under §§21815, §21820 and §21840. Cost estimates shall be reevaluated at the time of each plan amendment, update, or revision. Cost estimates shall be based on the actual current unit costs for closure and postclosure maintenance. Cost estimate adjustments based only on inflation factors are not acceptable.

(3) An updated demonstration of financial responsibility in accordance with Subchapter 2 of Chapter 6 (§22205 et seq). This demonstration shall reflect the updated cost estimates for closure and postclosure activities required under ¶(a)(2).

(b) The operator shall submit two copies of each document to the EA, the RWQCB, the CIWMB and the local air district. All drawings shall be submitted at an appropriate scale that clearly shows all pertinent features. The closure and postclosure maintenance plans shall be clearly marked "preliminary" or "final", depending on the status. For partial final closure, those sections submitted pursuant to §21800, shall be clearly marked "partial final."

(c) Plans for complete site closure of a solid waste landfill shall be submitted in accordance with the following schedule:

(1) Preliminary closure and postclosure maintenance plans for existing solid waste landfills shall be submitted at the time of application for each SWFP review or revision. The plans shall be submitted as part of the JTD or as a separate document in the form of a distinct component of a JTD;

(2) Preliminary closure and postclosure maintenance plans for new landfills not operating prior to the effective date of the regulations shall be submitted as part of the JTD or as a separate document in the form of a distinct component of a JTD at or before the time of application for a SWFP. For the purposes of this Subchapter, lateral expansions of landfills are considered new municipal solid waste landfills.

(3) Final closure and postclosure maintenance plans for solid waste landfills shall be submitted two years prior to the anticipated date of closure. Within five years of the anticipated date of closure, the operator may submit the final closure and postclosure maintenance plans in lieu of submitting new or updated preliminary closure and postclosure maintenance plans.

(d) Partial final closure of a solid waste landfill shall be allowed in accordance with the following:

(1) For the complete closure of discrete units, partial final closure and postclosure maintenance plans shall be submitted for each unit 2 years prior to the anticipated date of closure of that discrete unit in accordance with §§21800 and 21830. Closure of such a discrete unit shall not commence until approval of the partial final closure and postclosure maintenance plans for that discrete unit. The specific closure details for each discrete unit shall be compatible with closure of the entire landfill; and

(2) For the implementation of any one or a combination of individual final closure activities, partial final closure and postclosure maintenance plans for the activities shall be approved before implementation of such closure activities.

(e) If immediate closure of a disposal site is necessary to protect public health and safety and the environment, closure plans shall be submitted in accordance with a schedule specified by the EA and concurred with by the RWQCB and CIWMB. If the RWQCB or CIWMB

does not object to the schedule within 30 days of written notification by the EA, the schedule is deemed concurred with by that agency. An emergency corrective action plan may be required by the EA, to be submitted for approval by the EA. The emergency corrective action plan may be implemented prior to the submittal of the closure plan.

(f) If, at its own motion, an operator ceases accepting waste at a landfill prior to the anticipated closure date specified in the currently effective Solid Waste Facility Permit, and the operator does not intend to receive additional waste at the landfill, the operator shall submit final closure and postclosure maintenance plans in accordance with a schedule specified by the EA and concurred with by the RWQCB and CIWMB. If the RWQCB or CIWMB does not object to the schedule within 30 days of written notification by the EA, the schedule is deemed concurred with by that agency. In no case shall the schedule be longer than six (6) months from the date the operator ceased accepting waste at the landfill.

(g) The owner or operator of a MSWLF unit shall notify the EA that closure and postclosure maintenance plans have been prepared and placed in the operating record in accordance with 40 CFR 258.60(d) and 258.61(d).

**Note:**

**Authority cited:**

*Section 40502, Public Resources Code; and Section 66796.22(d), Government Code.*

**Reference:**

*Sections 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021, 43022 and 43103, Public Resources Code.*

**21787. CIWMB – Corrective Action Plan.**

(a) Concurrent with the submittal of any closure plan and/or postclosure maintenance plan, the operator shall submit a corrective action plan (CAP). The CAP shall describe the required response(s) to all known or reasonably foreseeable threats to the public health and safety and all known or reasonably foreseeable releases of pollution to the environment.

(1) The CAP shall include cost estimates for the response action(s) pursuant to §21815.

(b) An updated CAP, including updated cost estimates, shall be submitted at the same time as any updated, revised, or amended closure plan or postclosure maintenance plan is submitted.

(1) Updated cost estimates shall be based on the actual current unit costs for the CAP. Cost estimate adjustments based only on inflation factors are not acceptable.

**Note:**

**Authority cited:**

Sections 40502 and 43501, Public Resources Code.

**Reference:**

Sections 43020, 43021, 43103, and 43501, Public Resources Code.

**21790. CIWMB - Preliminary Closure Plan Contents. (T14:§18261, 18261.3)**

(a) The purpose of the preliminary plan is to provide a basis for the operator to establish a preliminary estimate of closure costs certified for accuracy by a registered civil engineer or certified engineering geologist, and enable the CIWMB to assess the reasonableness of the cost estimate for non-water quality aspects of closure.

(b) The plan shall identify the steps necessary to perform either partial final closure, in accordance with §21120, or complete landfill closure and shall include, but is not limited to, the following information:

(1) a closure cost estimate pursuant to §§21815 and §21820;

(2) location maps indicating property boundaries and the existing, permitted, and proposed final limits of waste placement; entry roads; and structures outside the property boundary but within 1000 feet of the property boundary. A location map shall also be included showing the general location of the landfill;

(3) [Reserved];

(4) a location map of the current monitoring and control systems including: leachate control and drainage and erosion control systems as required pursuant to chapter 3

(§20180 et seq.); landfill gas monitoring and control systems as required pursuant to chapter 3 (§20180 et seq.);

(5) a description of proposed postclosure land uses;

(6) an estimate of the maximum extent of the landfill that will ever require closure at any given time during the life of the landfill;

(7) an estimate of the closure date based on volumetric calculations, including supporting documentation. The estimate shall account for the effects of settlement and for volume occupied by daily cover material; and

(8) a preliminary description of closure activities including schedules for implementation. The activities described shall include, but are not limited to:

(A) site security and structure removal pursuant to §§21135 and 21137;

(B) final cover and grading pursuant to §§21140 and 21142. The description shall include type of materials and estimate of the volume or amount needed of each type of material. If on site materials are planned for use in the final cover for the low permeability layer, test results confirming the suitability of such materials shall be included;

(C) construction quality assurance methods pursuant to §§20323 & 20324;

(D) drainage and erosion control systems pursuant to §21150;

(E) landfill gas monitoring and control systems pursuant to Article 6, Subchapter 4, Chapter 3 (§20920 et seq.);

(F) leachate monitoring and control measures pursuant to §21160.

**Note:**

**Authority cited:**

*Section 40502, Public Resources Code; and Section 66796.22(d), Government Code.*

**Reference:**

*Section 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021 and 43103, Public Resources Code.*

**21800. CIWMB - Final Closure Plan Contents. (T14:§18262, 18262.3)**

(a) The purpose of the final closure plan is to provide a basis for the operator to establish an accurate detailed estimate of closure costs certified for accuracy by a registered civil engineer or certified engineering geologist, enable the CIWMB to assess the reasonableness of the cost estimate for non-water quality aspects of closure, provide a detailed plan and schedule for the operator to implement upon closure of the landfill, and allow monitoring of closure activities to determine that all requirements of landfill closure have been implemented in accordance with the appropriate plan.

(b) Final closure plans for partial final closure (i.e. the complete closure of discrete units) shall conform to the requirements of this section. Final closure plans for partial closure (i.e. implementation of any one or a combination of individual final closure activities) shall conform to the requirements of this section as applicable.

(c) The final closure plan shall include, but is not limited to, a detailed description of each item contained in §21790(b)(1) through (b)(8). In addition, the final closure plan shall include a detailed description of the sequence of closure stages, giving tentative implementation dates.

(d) The final closure plan shall also include a detailed schedule of closure activities and associated for disbursement of fundsexpenses for the closure activities. This detailed schedule will be utilized in determining approval of all disbursements as identified in §22234 of Chapter 6 of this Subdivision. from a trust fund, or enterprise fund if applicable, for either-

(1) advance payment for activities to be performed in accordance with the plan, or  
(2) reimbursement of costs paid for activities performed in accordance with the plan

**Note:**

**Authority cited:**

*Section 40502, Public Resources Code; and Section 66796.22(d), Government Code.*

**Reference:**

*Section 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021 and 43103, Public Resources Code.*

**21815. CIWMB – General Criteria for Cost Estimates.**

(a) Cost estimates shall be based on costs the state may incur if the state would have to assume responsibility for the closure, postclosure maintenance, or corrective action due to the failure of the operator to properly and adequately perform any or all of those activities.

(b) Cost estimates shall include, but not be limited to,:

(1) estimates in compliance with §§1770, 1773, and 1773.1 of the Labor Code;

(2) California Department of Transportation (Caltrans) *Labor Surcharge and Equipment Rental Rates*; and

(3) Caltrans "Force Account Payment" included in Section 9-1.03 of the *Caltrans Standard Specifications*.

(c) An operator may propose and the CIWMB may accept alternative costs for those included in ¶¶(b)(2) and (3) if the operator provides adequate justification for the use of alternative costs.

(d) Cost estimates shall be supported by adequate documentation to justify the estimates. This documentation shall be submitted with the estimate(s).

(e) The total cost estimate shall be increased by a factor of 20% to account for cost overruns due to unforeseen circumstances which would result in increased costs. The operator may apply to the CIWMB for, and the CIWMB may approve, a contingency percentage of less than 20% at the time that the final plans are approved, provided that the CIWMB finds that a lesser percentage will provide acceptable coverage of potential cost overruns;

(f) Prior to (1) the initiation of closure activities or (2) the implementation of a corrective action remedial action, the operator shall submit one of the following:

(1) a statement, under penalty of perjury, that the expected cost for closure construction or corrective action remedial action (based on submitted contractor bids or other appropriate documentation) will be equal to or less than the cost estimate included in the approved final closure plan or corrective action plan, as appropriate, or

(2) a revised cost estimate that reflects the expected costs (based on submitted contractor bids or other appropriate documentation).

**Note:**

**Authority cited:**

*Sections 40502 and 43501, Public Resources Code.*

**Reference:**

*Sections 43020, 43021, 43103, and 43501, Public Resources Code*

**21820. CIWMB - Closure Cost Estimates. (T14:§18263)**

(a) The operator shall provide a written cost estimate, in current dollars, of the cost of hiring a third party to close the landfill in accordance with the submitted closure plan. Cost estimates shall meet the following criteria:

(1) Cost estimates shall equal the cost of closing the landfill at the point in its active life when the extent and manner of operation would make closure the most expensive, as indicated by the closure plan;

(2) Cost estimates shall be developed for the activities anticipated for scheduled closure. The closure cost estimate shall always be high enough to ensure that, if, at any time, the landfill had to begin to close, the cost of activities for closure would not exceed the cost estimate;

(3) Cost estimates shall include or reflect the design, materials, equipment, labor, administration and quality assurance necessary for closure;

~~(4) The total closure cost estimate shall be increased by a factor of 20% to account for cost overruns due to unforeseen circumstances, such as adverse weather conditions and inadequate site characterization, which would result in increased closure costs. The operator may apply to the CIWMB for, and the CIWMB may approve, a contingency percentage of less than 20% at the time that the final closure plan is approved, provided that the CIWMB finds that a lesser percentage will provide acceptable coverage of potential cost overruns;~~

(54) The operator shall increase the closure cost estimate when changes to the plan or at the landfill increase the cost of closure; and

(65) The operator may reduce the closure cost estimate when changes to the plan or at the landfill decrease the costs of closure. The request for reduction shall be submitted to the CIWMB for approval.

(b) Closure cost estimates shall include, but are not limited to, the following information:

(1) If the documents are preliminary closure and postclosure maintenance plans, an estimate of the cost of developing final closure and postclosure maintenance plans; ~~and~~

(2) an estimate of the cost to prepare plans and specifications, bidding documents, and other construction related documents; and

~~(23)~~ (23) an estimate of the cost of closure activities including schedules for implementation activities. The activities described shall include, but are not limited to, an estimate of the cost:

(A) ~~an estimate of the cost~~ to install or upgrade site security;

(B) ~~an estimate of the cost~~ for structure removal; ~~and~~

(C) ~~an estimate of the costs~~ to install or upgrade the ~~landfill gas~~-monitoring and control systems, including landfill gas, leachate, and ground water systems.

(D) to install the final cover; and

(E) to install drainage and erosion control systems.

~~—(c) If the document is a preliminary plan, the items required under ¶(b)(2)(A), (B), and (C) may be provided as lump sum estimates.~~

**Note:**

**Authority cited:**

*Section 40502, Public Resources Code; and Section 66796.22(d), Government Code.*

**Reference:**

*Section 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021 and 43103, Public Resources Code.*

**21825. CIWMB - Preliminary Postclosure Maintenance Plan Contents. (T14:§18264, 18264.3)**

(a) The purpose of the preliminary postclosure maintenance plan is to provide a basis for the operator to establish a preliminary estimate of postclosure monitoring, maintenance, and inspection costs certified for accuracy by a registered civil engineer or certified engineering geologist, and enable the CIWMB to assess the reasonableness of the cost estimate.

(b) The preliminary postclosure maintenance plan shall include, but is not limited to the following information:

(1) a description of the planned uses of the property during the postclosure maintenance period in accordance with §21190; ~~and~~

(2) a preliminary description of the methods, procedures, and processes that will be used to maintain, monitor and inspect the closed landfill during the postclosure maintenance period to comply with §21180; ~~and~~

(3) a postclosure maintenance cost estimate pursuant to §§21815 and 21840.

**Note:**

**Authority cited:**

*Section 40502, Public Resources Code; and Section 66796.22(d), Government Code.*

**Reference:**

*Section 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021 and 43103, Public Resources Code.*

**21830. CIWMB - Final Postclosure Maintenance Plan Contents. (T14:§18265, 18265.3)**

(a) The purpose of the final postclosure maintenance plan is to provide a basis for the operator to establish an accurate detailed cost estimate certified for accuracy by a registered civil engineer or certified engineering geologist, enable the CIWMB to assess the



reasonableness of the cost estimate, and provide a detailed plan for the inspection, maintenance, and monitoring of the landfill during the postclosure maintenance period.

(b) The final postclosure maintenance plan shall include, but is not limited to, the following information:

(1) the emergency response plan as required by §21130 of Chapter 3, Subchapter 5;

(2) the persons or companies responsible for each aspect of postclosure maintenance, and their addresses and telephone numbers;

(3) a description of the planned uses of the property during the postclosure maintenance period in accordance with §21190 of Chapter 3, Subchapter 5;

(4) an as built description of the current monitoring and control systems at the landfill including a detailed description of any proposed changes to be implemented as part of closure. This description shall be kept current throughout the postclosure maintenance period;

(5) a detailed description of the methods, procedures and processes that will be used to maintain, monitor and inspect the closed landfill during the postclosure maintenance period to comply with §21180 of Chapter 3, Subchapter 5;

(6) an operations and maintenance plan for the gas control system;

(7) a summary of the requirements for reporting the results of monitoring and collection, pursuant to ~~section §~~21180 of chapter 3, Subchapter 5; and

(8) the postclosure maintenance cost estimates pursuant to ~~§§21815 and §~~21840 of this Subchapter.

**Note:**

**Authority cited:** Section 40502, Public Resources Code; and Section 66796.22(d), Government Code.

**Reference:** Section 66796.22(b) and 66796.22(d), Government Code; and Sections 43020, 43021 and 43103, Public Resources Code.

**21840. CIWMB - Postclosure Maintenance Cost Estimates. (T14:§18266)**

(a) The operator shall provide a written estimate, in current dollars, of the cost of hiring a third party to maintain, monitor, and inspect the closed landfill in accordance with the postclosure maintenance plan requirements. Cost estimates shall be subject to the following requirements:

(1) Cost estimates shall be based on the activities described in the postclosure maintenance plan and account for postclosure maintenance of the entire landfill;

~~(2) Cost estimates shall be of sufficient detail to identify the maintenance costs, repair costs, and replacement costs throughout the postclosure maintenance of the landfill;~~

~~(23) The cost estimate used to demonstrate financial assurance, shall be the annual cost of maintenance and monitoring anticipated during the entire postclosure period (i.e., until the waste no longer pose a threat to public health and safety and the environment), multiplied by fifty (50)thirty (30) years; and~~

~~(A) Cost estimates for those maintenance and monitoring activities which occur less frequently than annually shall be prorated to an annual cost. The expected recurrence period shall be specified in the postclosure maintenance plan; and~~

**[Note: Alternate to ¶ (a)(3) above is the following italicized ¶ (a)(3). We are soliciting comments on both sections as alternative language requiring an estimate of postclosure maintenance costs sufficient to meet the ongoing postclosure maintenance of the closed facility until the facility no longer poses a threat to the public health and safety and the environment. The intent of the 50-year timeframe here is to increase the total PCM cost estimate sufficiently to allow for investment of the funds and accrual of earnings, either by the operator's trustee or the CIWMB (in the instance of operator failure to perform PCM), such that operators should not incur greatly increased costs; also see §22110.]**

~~(23) The cost estimate used to demonstrate financial assurance, shall be the total of each of the annualsheduled costs of maintenance and monitoring anticipated during the-a~~

~~minimum of 50 years of postclosure period maintenance of the landfill (i.e., until the waste no longer pose a threat to public health and safety and the environment).~~

~~(A) Maintenance, monitoring and replacement activities which occur less frequently than annually shall be specified in the postclosure maintenance plan with the associated expected frequency of occurrences and appropriately included in the schedule of costs identified in ¶(a)(3), multiplied by thirty (30) years; and~~

~~(i) Cost estimates for those maintenance and monitoring activities which occur less frequently than every 50 years shall be calculated as occurring every 50 years;~~

(34) The operator shall modify the postclosure cost estimate, in accordance with §21865 of this Subchapter, when changes in the plan or landfill conditions indicate an increase or decrease in postclosure maintenance costs. Requests for modifications shall be submitted to the CIWMB for approval.

~~(b) Preliminary postclosure maintenance plans shall include a lump sum estimate of the annual cost of postclosure monitoring and maintenance in accordance with ¶(c);~~

~~(e) Final postclosure Postclosure~~ maintenance plans shall include a detailed estimate of the annual costs for postclosure monitoring and maintenance, including the following:

(1) site security pursuant to §21135;

(2) maintenance and integrity of the final cover including material acquisition, labor, and placement for repair of the final cover as required due to the effects of settlement, slope failure, or erosion;

(3) maintenance of vegetation including fertilization, irrigation and irrigation system maintenance;

(4) monitoring, operation and maintenance of the ~~landfill gas environmental~~ monitoring and control systems, including, but not limited to, the landfill gas, leachate, and ground water systems;

(5) maintenance of the drainage and erosion control systems including clearing materials blocking drainage conveyances and repairing drains, levees, dikes and protective berms.

**Note:**

**Authority cited:**

Section 40502, 40508, and Public Resources Code.

**Reference:**

Sections 40508, 43020, 43021, 43103, 43501 and 43509, Public Resources Code; and Title 40, Code of Federal Regulations, Sections 258.72.

**21865. CIWMB - Amendment of Closure and Postclosure Maintenance Plans.  
(T14:§18272)**

(a) Preliminary closure and postclosure maintenance plans shall be submitted every time a review or revision of the SWFP is conducted. The plans shall be submitted as part of the JTD or a separate document in the form of a distinct component of a JTD. If the preliminary closure and postclosure maintenance plans have been previously approved and a new horizontal or vertical expansion of a solid waste landfill is not proposed, the form of submittal shall be as amendments to the existing plans as necessary. Submittal shall be in accordance with §21780. The evaluation and approval of the plan amendments shall be as specified under §21860.

(b) The plans shall be amended to reflect the following:

(1) A change in operation or solid waste landfill design which would affect the implementation of the closure and/or postclosure maintenance plans;

(2) A change in the anticipated year of closure;

(3) Any change in the financial mechanism required pursuant to §22227, "Substitution of Mechanisms" or §22231, "Cancellation or Nonrenewal by a Provider of Financial Assurance"; or

(4) Updates of the cost estimates. ~~These updates shall be adjusted for current costs shall be based on the actual current unit costs for closure and postclosure maintenance.~~ Cost estimate adjustments based only on inflation factors are not acceptable.

[Note: The intent of subsection (b) is to assure adequate review of the amended portions of the plans and not to institute a comprehensive review of the portions of the plan not subject to the amendments.]

**Note:**

**Authority cited:**

Section 40502, Public Resources Code; and Section 66796.22(d), Government Code.

**Reference:**

Section 66796.22(d), Government Code; and Section 43103, Public Resources Code.

## **Chapter 6 Financial Assurances at Solid Waste Facilities and at Waste Management Units for Solid Waste**

### **Subchapter 2. Financial Assurance Requirements**

## **Article 2. Financial Assurance for Postclosure Maintenance**

### **22210. CIWMB - Scope and Applicability. (T14:§18280)**

(a) This article requires operators of solid waste landfills to:

(1) demonstrate the availability of financial resources to conduct postclosure maintenance activities until the solid waste landfill no longer poses a threat to public health and safety and the environment; or

(2) provide to the CIWMB a trust fund of sufficient value to ensure perpetual maintenance of the solid waste landfill. The anticipated interest earnings will be based on the 15-year average annual rate of return available from the Surplus Money Investment Fund (SMIF).

(b) The requirements of this article apply to operators of all disposal facilities that are required to be permitted as solid waste landfills pursuant to Chapter 4 of this Division and have been or will be operated on or after January 1, 1988.

(c) Operators of all disposal facilities shall comply with the requirements of this Article upon application for issuance, amendment, modification, revision or review of a SWFP, commencing the effective date of this Article.

**Note:**

**Authority cited:**

Sections 40502 and 43509, Public Resources Code.

**Reference:**

Sections 43103, 43500, 43600, 43602 and 43603, Public Resources Code.

### **22234. CIWMB - Disbursements from Financial Mechanisms. (T14:§ 17258.74)**

(a) The operator, or other person authorized to conduct closure, postclosure maintenance, or corrective action activities may request disbursements from the CIWMB for these expenditures in advance of the activity(ies) or as reimbursement for activity(ies) completed. Requests for disbursement will be granted by the CIWMB only if:

(1) Sufficient funds are remaining in the financial mechanism(s) to cover the remaining costs of closure, postclosure maintenance, or corrective action; and

(2) Justification and documentation of the cost is presented to the CIWMB for review and approval in conjunction with approved final closure and postclosure maintenance plans, or an approved corrective action plan.

(b) The CIWMB shall authorize disbursements from an established closure or postclosure maintenance financial assurance mechanism to the RWQCB for the costs of closure or postclosure maintenance if the RWQCB finds that the operator has failed to perform closure or postclosure maintenance as required by the closure plan or postclosure maintenance plan as approved by the RWQCB and the CIWMB, or as required by an Order issued by the RWQCB, including Waste Discharge Requirements (**WDRs**), Cease and Desist Orders (**CDOs**), and/or Cleanup and Abatement Orders (**CAOs**).



(c) The CIWMB shall authorize disbursements from an established corrective action financial assurance mechanism to the RWQCB for the costs of corrective action if the RWQCB finds that the operator has failed to perform corrective action as required by the corrective action workplan as approved by the RWQCB and the CIWMB, or as required by an Order issued by the RWQCB, including WDRs, CDOs, and/or CAOs.

**Note:**

**Authority cited:**

*Section 40502, Public Resources Code.*

**Reference:**

*Sections 43103, 43500 - 43610, Public Resources Code; Title 40, Code of Federal Regulations, Section 258.74(a)(7).*

**22235. CIWMB - Release of Financial Assurance Requirements. (T14:§ 18245, 18298)**

(a) After receiving and approving certification of closure from the operator as specified by §21880, the CIWMB shall notify the operator and the provider of financial assurance in writing, that he or she is no longer required to demonstrate financial responsibility for closure and third party operating liability claims, pursuant to this Chapter, at the particular disposal facility pursuant to this Article.

(b) When operational control of a disposal facility is transferred, the existing operator shall remain subject to the requirements of this Chapter until the new operator provides acceptable financial assurances to the CIWMB.

(c) When the CIWMB determines that an operator has completed postclosure maintenance in accordance with the applicable postclosure plan and the determination is made by the CIWMB that the solid waste landfill no longer poses a threat to the public health and safety and the environment, the CIWMB shall notify the operator in writing that it is no longer required to maintain financial assurance for postclosure maintenance of the particular solid waste landfill pursuant to this Chapter.

(d) When the CIWMB releases an operator that is using a trust fund or a similar financial assurance mechanism in conjunction with an enterprise fund or government securities from the requirements of this Chapter, the CIWMB shall authorize the termination of the trust fund or the similar mechanism.

**Note:**

**Authority cited:**

*Section 40502 and 43040, Public Resources Code.*

**Reference:**

*Sections 43040, 43103 and 43500-43610, Public Resources Code.*

**22236. CIWMB - Annual Inflation Factor. (T14:§18272)**

The operator shall submit, by June 1 of each year, a report calculating the increase in the cost estimates for closure and/or postclosure maintenance and/or corrective action due to the inflation factor for the previous calendar year. The inflation factor is derived from the greater of either the annual Construction Cost Price Index (to be determined) or the Implicit Price Deflator for Gross National Product as published annually by the U.S. Department of Commerce in its Survey of Current Business, which is-are incorporated by reference. The inflation factor is the result of dividing the latest annual published deflator by the deflator for the previous year. The operator shall increase the monetary amount of the financial mechanism required under this Chapter based upon this inflation factor. The mechanism may not be decreased other than as a result of the closure and/or postclosure maintenance and/or corrective action plan amendment process.

**Note:**

**Authority cited:**

*Section 40502, Public Resources Code.*

**Reference:**

*Sections 43103 and 43501, Public Resources Code.*

## Article 2. CIWMB - Financial Assurance Mechanisms

### 22240. CIWMB - Trust Fund. (T14:§17258.74, 18234, 18284)

(a) The trust fund shall have a trustee that is authorized to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(b) The trust agreement shall be worded as specified by and established by using Form CIWMB 100 (~~4/96-11/06~~) which is incorporated by reference, with appropriate amendments to identify that the mechanism is utilized for closure and/or postclosure maintenance and/or third party operating liability and/or corrective action.

(c) If, at any time, the value of the trust fund is greater than the required amount of coverage minus the amount of coverage demonstrated by another mechanism, the operator may request in writing that the CIWMB authorize the release of the excess funds. The CIWMB shall review the request within 90 days of receipt of the request. If any excess funds are verified, the CIWMB shall instruct the trustee to release the funds.

**Note:**

**Authority cited:**

*Section 40502 and 43040, Public Resources Code.*

**Reference:**

*Section 43040, 43103 and 43500-43610, Public Resources Code.*

### 22243. CIWMB - Letter of Credit. (T14:§17258.74, 18287)

(a) The institution issuing a letter of credit shall have the authority to issue letters of credit and its letter-of-credit operations shall be regulated and examined by a federal or state agency.

(b) The letter of credit shall be worded and completed, with appropriate amendments to identify that the mechanism is utilized for closure and/or postclosure maintenance and/or corrective action costs, as specified by form CIWMB 101 (~~4/96-12/01~~) which is incorporated by reference. The original mechanism must be submitted to the CIWMB.

(c) The letter of credit shall be accompanied by a letter from the operator identifying the number, issuing institution, and date of issuance of the letter of credit and the name, address, solid waste information system number, and amount of funds assured by the letter of credit for closure and/or postclosure maintenance and/or corrective action for each solid waste landfill. If the letter of credit is for more than one coverage requirement and/or for more than one solid waste landfill, appropriate sublimits must also be clearly identified within the letter of credit.

(d) The letter of credit shall be irrevocable and shall be issued for a period of at least one year, except as noted in ¶(d)(2).

(1) The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year, unless the issuing institution provides notice of termination as specified in §22231.

(2) If an operator fails to demonstrate alternate coverage within 60 days after receiving a notice of termination, the CIWMB may allow an issuing institution an extension to the term of a letter of credit for a period of time shorter than one year.

(e) The issuing institution shall become liable under the terms of the letter of credit if the CIWMB determines that the operator has failed or is failing to perform closure or postclosure maintenance or corrective action activities as guaranteed by the mechanism.

(f) The operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in §22227 or if the operator is released from the requirements of this section in accordance with §22235.

**Note:**

**Authority cited:**

*Section 40502, Public Resources Code.*

**Reference:**

*Sections 43103, 43500-43610, Public Resources Code.*

### 22244. CIWMB - Surety Bond. (T14:§17258.74, 18288)

(a) The status of the surety company issuing a surety bond shall be among those listed as holding certificates of authority as acceptable sureties on Federal bonds and as acceptable reinsuring companies in Circular 570 of the U.S. Department of the Treasury which is published on July 1 of each year in the Federal Register.

(b) The penal sum of the bond must be in an amount at least equal to the closure and/or postclosure and/or the corrective action cost estimate, except as provided in §22228.

(c) The surety bond shall be worded and completed as specified by one of the following forms, which shall be supplied by the CIWMB. The original mechanism must be submitted to the CIWMB:

(1) Form CIWMB 102(a) (~~4/96-12/01~~) which is incorporated by reference, for a surety bond guaranteeing performance of closure; or

(2) Form CIWMB 102(b) (~~4/96-12/01~~) which is incorporated by reference, for a surety bond guaranteeing performance of postclosure maintenance; or

(3) Form CIWMB 102(c) (~~4/96-12/01~~) which is incorporated by reference, for a surety bond guaranteeing performance of reasonably foreseeable and/or known corrective action activities; or

(4) Form CIWMB 103(a) (~~4/96-12/01~~) which is incorporated by reference, for a surety bond guaranteeing payment of closure costs; or

(5) Form CIWMB 103(b) (~~4/96-12/01~~) which is incorporated by reference, for a surety bond guaranteeing payment of postclosure maintenance costs; or

(6) Form CIWMB 103(c) (~~4/96-12/01~~) which is incorporated by reference, for a surety bond guaranteeing payment of reasonably foreseeable and/or known corrective action costs.

(d) The surety company shall become liable under the terms of the bond if the CIWMB determines that the operator has failed or is failing to perform closure or postclosure maintenance or corrective action as guaranteed by the bond.

(e) Payments made under the terms of the bond will be deposited by the surety directly into the depository trust fund, as identified in §22237.

(f) The operator may cancel the bond only if alternate financial assurance is substituted as specified in §22227 or if the operator is no longer required to demonstrate financial responsibility in accordance with §22235.

**Note:**

**Authority cited:**

*Section 40502, Public Resources Code.*

**Reference:**

*Sections 43103, 43500-43610, Public Resources Code.*

**22246. CIWMB - Financial Means Test. (T14:§18238, 18289)**

(a) To pass the financial means test, an operator or a guarantor shall be a private entity and shall meet the criteria of ¶(d), ¶(e), ¶(f) or ¶(g) based on independently audited year-end financial statements for the latest completed fiscal year.

(b) The phrase "amount of liability coverage to be demonstrated by the test" as used in ¶(d) and ¶(e) refers to the amount of liability coverage required by §22216.

(c) The phrase "current cost estimates covered by the test" as used in ¶(f) and §(g) refers to the current postclosure cost estimate required by ¶(h)(1) to be shown in paragraphs 1 and 2 of the letter from the chief financial officer.

(d) To cover operating liability the operator or guarantor shall have:

(1) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by the test; and

(2) Tangible net worth of at least ~~\$10~~ \$15 million; and

(3) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the amount of liability coverage to be demonstrated by the test.

(e) To cover operating liability the operator or guarantor shall have:

(1) A current rating for its most recent bond issuance of AAA, AA, A, or BBB issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(2) Tangible net worth of at least six times the amount of liability coverage to be demonstrated by the test; and

- (3) Tangible net worth of at least \$~~10-15~~ million; and
- (4) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the amount of liability coverage to be demonstrated by the test.
- (f) To cover postclosure maintenance the operator or guarantor shall have:
- (1) Two of the following three ratios: a ratio of total liabilities to net worth that is less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities that is greater than 0.1; and a ratio of current assets to current liabilities that is greater than 1.5; and
- (2) Net working capital and tangible net worth each at least six times the sum of the current cost estimate covered by the test; and
- (3) Tangible net worth of at least \$~~10-15~~ million; and
- (4) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current cost estimate covered by the test.
- (g) To cover postclosure maintenance the operator or guarantor shall have:
- (1) A current rating for its most recent bond issuance of AAA, AA, A, or BBB issued by Standard and Poor or Aaa, Aa, A, or Baa as issued by Moody's; and
- (2) Tangible net worth at least six times the sum of the current cost estimate covered by the test, and
- (3) Tangible net worth of at least \$~~10-15~~ million and
- (4) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current cost estimate covered by the test.
- (h) Within 90 days after the close of each financial reporting year, the operator or the guarantor shall submit the following items to the CIWMB and, in the case of a guarantor, to the operator;
- (1) A letter on the operator's or guarantor's official letterhead stationary that is worded and completed as specified in form CIWMB 104 (~~4/96-11/06~~) which contains an original signature of the operator's or guarantor's chief financial officer.
- (A) An operator or guarantor shall use form CIWMB 104 (~~4/96-11/06~~) to demonstrate or guarantee financial responsibility for liability coverage only or postclosure costs only or both liability and postclosure maintenance. If the operator or guarantor is using a similar financial means test to demonstrate liability coverage and/or postclosure maintenance for facilities in other states, the operator shall list those out-of- state facilities, as well as the California facilities on this test.
- (2) A copy of an independent certified public accountant's report on examination of the operator's or guarantor's financial statements for the latest completed fiscal year, with a copy of the operator's or guarantor's financial statements for the latest completed fiscal year.
- (3) A letter from an independent certified public accountant stating that:
- (A) He or she has compared the data in the letter in ¶(h)(1), from the chief financial officer specified as having been derived from the financial statements for the latest completed fiscal year of the operator or the guarantor, with the amounts in the financial statements; and
- (B) Based on the comparison, no matters came to his or her attention that caused him or her to believe that the specified data should be adjusted.
- (4) If the operator or the guarantor is required to make such a filing, a copy of the operator's or guarantor's most recent form 10-K filed with the U.S. Securities and Exchange Commission.
- (i) The CIWMB may require updated financial statements at any time from the operator or guarantor. If the CIWMB finds that the operator or guarantor no longer meets the financial means test requirements of ¶¶(d),(e),(f), or (g) based on such reports or other information, including but not limited to, credit reports and reports from other state agencies, the operator shall obtain alternate coverage within 60 days after receiving the notification of such a finding.
- (j) If, at the time of its annual filing, an operator using the financial means test fails to meet the requirements of the financial means test under ¶¶(d),(e),(f), or (g), the operator shall obtain alternate coverage within 60 days after the determination of such failure.

(k) If the operator fails to obtain alternate coverage within the times specified in ¶¶(i) or (j), the operator shall notify the CIWMB by certified mail within 10 days of such failure.

**Note:**

**Authority cited:**

*Section 40502 and 43040, Public Resources Code.*

**Reference:**

*Sections 43040 and 43103, Public Resources Code.*

**22247. CIWMB - Guarantee. (T14:§18239, 18291)**

(a) The guarantor shall be:

(1) A parent corporation of the operator;

(2) A firm whose parent corporation is also the parent corporation of the operator; or

(3) A firm engaged in a substantial business relationship with the operator and issuing the guarantee as an act incident to that business relationship.

(b) The guarantor shall meet the requirements of the financial means test under §22246 of this Article based on the guarantor's audited year-end financial statements.

(c) The guarantee shall be worded and completed as specified by form CIWMB 105 (~~4/96~~ 12/01), which is incorporated by reference.

(d) The terms of the guarantee shall specify that if:

(1) The operator fails or is failing to perform postclosure maintenance in accordance with the applicable approved postclosure maintenance plan when required to do so, the guarantor shall either:

(A) Perform postclosure maintenance in accordance with the applicable approved postclosure maintenance plan; or

(B) Establish and fund a trust fund, as specified in §22240, in the name of the operator in the amount of the applicable current postclosure maintenance cost estimate covered by the guarantee.

(2) The operator fails to satisfy a judgment or an award for bodily injury and property damage to third parties caused by accidental occurrences, or fails to pay an amount agreed in settlement of a claim arising from or alleged to arise from such injury and damage, the guarantor shall satisfy such judgment, award, or settlement agreement up to the limits of the guarantee.

(e) If the guarantor fails to meet the requirements of the financial means test under §22246 or wishes to terminate the guarantee, the guarantor shall send notice of such failure or termination by certified mail to the operator<sup>7</sup> and the CIWMB within 90 days after the end of that financial reporting year. The guarantee shall terminate no less than 60 days after the date that the operator<sup>7</sup> and the CIWMB have received the notice of such failure or termination, as evidenced by the return receipts. The guarantor shall establish alternate coverage as specified in §22228 on behalf of the operator within 60 days after such notice, unless the operator has done so.

(f) The CIWMB may require updated financial statements at any time from a guarantor. If the CIWMB finds, on the basis of such reports or information from other sources, including but not limited to, credit reports and reports from other state agencies, that the guarantor no longer meets the financial means test requirements of §22246 or any requirements of §22247, the CIWMB shall notify the guarantor and operator of such finding by certified mail. The guarantor shall establish alternate coverage as specified in §22228 on behalf of the operator within 60 days after such notice, unless the operator has done so.

**Note:**

**Authority cited:**

*Section 40502 and 43040, Public Resources Code.*

**Reference:**

*Sections 43040, 43103 and 43500-43610, Public Resources Code.*

**22248. CIWMB - Closure and/or Postclosure Maintenance and/or Reasonably Foreseeable Corrective Action Insurance. (new)**



1 (a) The issuer of the insurance policy shall be an insurer, including a captive insurance  
2 company that, at a minimum, is licensed by the California Department of Insurance to  
3 transact the business of insurance in the State of California as an admitted carrier.

4 (b) If coverage is not available as specified in ¶(a), the operator may seek coverage  
5 from an insurer, including a captive insurance company that, at a minimum, shall be eligible  
6 to provide insurance as an excess or surplus lines insurer in California.

7 (c) If coverage is obtained as described in ¶(b), the insurance shall be transacted by and  
8 through a surplus lines broker currently licensed under the regulations of the California  
9 Department of Insurance [California Insurance Code (CIC), Division 1, Part 2, Chapter 6]  
10 and upon the terms and conditions prescribed by the California Department of Insurance.

11 (d) The CIWMB or its designee may object to the use of any insurer at anytime, whether  
12 before or after placement of coverage based on information obtained from, but not limited  
13 to, the Surplus Line Association of California, Best's Insurance Reports, and/or the Non-  
14 Admitted Insurers Quarterly List.

15 (e) The closure or postclosure maintenance insurance or reasonably foreseeable  
16 corrective action policy shall guarantee that funds will be available to close the solid waste  
17 landfill whenever final closure occurs or to provide postclosure maintenance for the solid  
18 waste landfill whenever the postclosure maintenance period begins or provide for corrective  
19 action for the solid waste landfill if corrective action is deemed necessary, whichever is  
20 applicable. The policy shall also guarantee that once the closure or postclosure maintenance  
21 or corrective action program begins, the insurer will be responsible for the paying out of  
22 funds to the operator or person authorized to conduct closure or postclosure maintenance or  
23 corrective action, up to an amount equal to the face amount of the policy.

24 (f) The insurance policy shall be issued for a face amount at least equal to the most  
25 recently approved closure and/or postclosure maintenance and/or reasonably foreseeable  
26 corrective action cost estimate(s) whichever is applicable, unless the policy is being used in  
27 combination with another acceptable mechanism. The term "face amount" means the total  
28 amount the insurer is obligated to pay under the policy. Actual payments by the insurer will  
29 not change the face amount, although the insurer's future liability may be lowered by the  
30 amount of the payments.

31 (g) An operator, or any other person authorized to conduct closure or postclosure  
32 maintenance or corrective action, may receive reimbursements for closure or postclosure  
33 maintenance or corrective action expenditures, whichever is applicable. Requests for  
34 reimbursement will be granted by the insurer only if the remaining value of the policy is  
35 sufficient to cover the remaining costs of closure or postclosure maintenance or corrective  
36 action and if the expenditures have been reviewed and approved in writing by the CIWMB or  
37 its designee.

38 (h) Notwithstanding any other provisions of this section, if either partial or complete  
39 closure, postclosure maintenance or corrective action activities are ordered by the CIWMB  
40 or its designee as a result of failure by the operator or person authorized to conduct such  
41 activities, the policy shall also guarantee that the insurer shall be responsible for paying out  
42 funds to the CIWMB for deposit into a special account established by the CIWMB for closure,  
43 postclosure maintenance or corrective action activities of the facility. The policy shall further  
44 guarantee that the insurer shall, without delay, pay to the CIWMB the amount the CIWMB  
45 requests, up to an amount equal to the face amount of the policy, regardless of any  
46 remaining premiums to be paid in or any other issue the insurer may raise which could  
47 delay payment. CIWMB requests for payment will be based on current estimated expenses  
48 as determined by the CIWMB for closure, postclosure maintenance or corrective action  
49 activities. Any payments made by the insurer that exceed the actual expenses incurred in  
50 performing the insured activity will be repaid to the insurer at the completion of the insured  
51 activity.

52 (i) Delay by the insurer to make timely payment as requested in writing by the CIWMB  
53 will subject the insurer to penalties and full reimbursement of expenditures made by the  
54 CIWMB for legal costs, contracting expenses and potential corrective actions to remediate  
55 impacts of such delays on the public health and safety or the environment. These penalties

and expenses will be separate from the face amount of the policy and are not subject to repayment to the insurer at completion of the insured activity.

(i) Each policy shall contain a provision allowing assignment of the policy to a successor operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(j) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator, and the 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in §22228.

(k) For insurance policies providing coverage for postclosure maintenance, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increases must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(l) The operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in §22227, or if the operator is no longer required to demonstrate financial responsibility in accordance with the requirements of Subchapter 2 of this Chapter.

(m) Each closure and/or postclosure maintenance and/or reasonably foreseeable corrective action insurance policy shall be evidenced by a certificate of insurance established by using form CIWMB 106 (~~08/2001-11/06~~), which is incorporated by reference. Each certificate of insurance shall contain the insurer's warranty that the policy conforms in all respects with the requirements of this Subdivision, as applicable, and as such regulations were constituted on the date the policy is certified to on an annual basis. In addition, the insurer shall agree that any provision of the policy inconsistent with these regulations is amended to eliminate such inconsistency by submittal of the certification for closure and/or postclosure maintenance and/or reasonably foreseeable corrective action insurance.

**Note:**

**Authority cited:**

*Sections 40502, Public Resources Code.*

**Reference:**

*Sections 43103, 43500-43610, Public Resources Code.*

**22249. CIWMB - Local Government Financial Test.**

(a) To pass the local government financial test, and to demonstrate financial responsibility for postclosure maintenance and/or corrective action costs, an operator or a guarantor shall be a local government agency and shall meet the criteria of ~~sections 111~~(e), (f), (i) and (j) based on financial statements prepared in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant.

(b) A local government is not eligible to assure its obligations under ~~section 111~~22249 if it:

- (1) Is currently in default on any outstanding general obligation bonds, or
- (2) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's, or
- (3) Has operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years, or

(4) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant auditing its financial statement as required by ~~section 111~~(a).

(c) The phrase "current postclosure maintenance cost estimates covered by the test" refers to the current postclosure maintenance cost estimate required by ~~section 111~~(j)(1) to be shown in paragraphs 1 and 2 of the letter from the chief financial officer.

(d) The phrase "current corrective action cost estimates covered by the test" refers to the current corrective action cost estimate required by ~~section 11(j)~~(1) to be shown in paragraphs 1 and 2 of the letter from the chief financial officer.

(e) The total amount of postclosure maintenance costs and corrective action costs which can be assured under this local government financial test is determined as follows:

(1) If the local government operator or guarantor does not assure other environmental obligations through a financial test, it may assure postclosure maintenance costs and/or corrective action costs that equal up to 43 percent of the local government's total annual revenue.

(2) If the local government operator or guarantor assures other environmental obligations through a financial test, including but not limited to those associated with underground injection control wells, petroleum underground storage tank facilities, PCB storage facilities, and hazardous waste treatment, storage, and disposal facilities, it must add those costs to the postclosure maintenance costs and/or corrective action costs it seeks to assure. The total that may be assured must not exceed 43 percent of the local government's or guarantor's total annual revenue.

(3) The operator or guarantor must obtain an alternate financial assurance instrument for those costs that exceed the limits set in (1) and (2).

(f) The operator or guarantor shall meet the criteria of either ~~section 11(g)~~ or (h) based on the operator's or guarantor's most recent audited annual financial statements prepared in conformity with Generally Accepted Accounting Principles for governments.

(g) The operator or guarantor shall satisfy each of the following financial ratios based on the operator's or guarantor's most recent audited annual financial statements prepared in conformity with Generally Accepted Accounting Principles for governments:

(1) Liquidity ratio: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(2) Debt service ratio: a ratio of annual debt service to total expenditures less than or equal to 0.20; or

(h) An operator or guarantor with outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee must have such bonds with current investment grade rating as follows:

(1) Aaa, Aa, A or Baa, as issued by Moody's on all such general obligation bonds; or

(2) AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds.

(i) The operator or guarantor shall provide public notice of the local government's assured obligations by placing a reference to the postclosure maintenance costs and/or corrective action costs assured through the financial test into its next comprehensive annual financial report (CAFR). If timing does not permit the reference to be incorporated into the most recently issued CAFR or budget prior to the first year the financial test is used to assure local government solid waste facility obligations, the reference may instead be placed in the operating record until issuance of the next available CAFR. The operator shall certify that the reference to the postclosure maintenance costs and/or corrective action costs assured through the financial test is provided. The operator's certification shall be submitted with the chief financial officer letter as specified in ~~section 11(j)~~(2).

(1) For postclosure maintenance costs, conformance with Government Accounting Standards Board (GASB) Statement 18 assures compliance with this public notice requirement.

(2) The following, including the GASB requirements, shall be disclosed:

(A) The nature and source of requirements for those obligations assured by the local government financial test including postclosure maintenance costs and/or corrective action costs; and

(B) Postclosure maintenance costs recognized at the balance sheet date; and

(C) Estimated postclosure maintenance costs remaining to be recognized; and

(D) Percentage of landfill capacity used to date, as of the end of the latest completed fiscal year; and

(E) Remaining landfill capacity reported in cubic yards or tons as of the end of the latest completed fiscal year; and

(F) Estimated remaining useful landfill life in years; and

(G) Corrective action costs. The reference shall be placed in the CAFR not later than 120 days after the corrective action remedy has been selected as required under Article 1, Subchapter 3, Chapter 3 (~~section §~~20380 et seq.).

(j) Within 180 days after the close of each financial reporting year, the operator or guarantor shall submit the following items to the CIWMB and, in the case of a guarantor also, to the operator;

(1) A letter on the local government's letterhead stationary that is worded and completed as specified in Form CIWMB 112(2/05), which is incorporated by reference, which contains an original signature of the local government's chief financial officer. An operator or guarantor shall use Form CIWMB 112(2/05) to demonstrate or guarantee financial responsibility for postclosure maintenance costs and/or corrective action costs.

(A) If the operator or guarantor is using a similar financial test to demonstrate postclosure maintenance costs and/or corrective action costs for other environmental obligations including but not limited to those associated with underground injection control wells, petroleum underground storage tank facilities, PCB storage facilities, and hazardous waste treatment, storage, and disposal facilities, the operator or guarantor shall list those facilities, as well as the solid waste facility obligations it seeks to assure.

(2) A letter from the local government's treasurer or auditor-controller certifying the relative size (43%) threshold as specified in ~~section 1~~(e), and the public notice requirement as specified in ~~section 1~~(i) have been satisfied.

(3) A copy of an independent certified public accountant's report on examination of the operator's or guarantor's financial statements for the latest completed fiscal year, with a copy of the operator's or guarantor's financial statements for the latest completed fiscal year.

(A) An unqualified opinion of the independent certified public accountant is required.

(B) Local governments that have audits conducted only once every two years due to state law, may use the latest annual statement, audited or unaudited, provided that the most recent audit resulted in an unqualified opinion from the auditor.

(4) A letter from an independent certified public accountant that performed the audit:

(A) Stating that he or she has reviewed the letter required by ~~section 1~~(j)(1) from the chief financial officer including data derived from the financial statements for the latest completed fiscal year of the operator or the guarantor, and compared the data with the amounts in the financial statements; and

(B) Describing the procedures performed and related findings, including whether or not there were discrepancies found in the comparison, based on an agreed-upon procedures engagement performed in accordance with American Institute of Certified Public Accountants, Inc.'s (AICPA's) Statement on Auditing Standards No. 75, Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts or Items of a Financial Statement.

(5) A copy of the comprehensive annual financial report (CAFR) used to comply with ~~section 1~~(i) or certification by the local government's treasurer or auditor-controller that the requirements of General Accounting Standards Board Statement 18 have been met.

(6) A copy of the bond rating on the bond rating service's letterhead stationery.

(k) The CIWMB may require updated financial statements at any time from the operator or guarantor. If the CIWMB finds that the operator or guarantor no longer meets the local government financial test requirements of ~~sections 1~~(g) or (h), the operator shall obtain alternate coverage within 60 days after receiving the notification of such a finding.

(l) If, when preparing its annual update, an operator using the local government financial test fails to meet the requirements of the financial test under ~~sections 1~~(g) or (h), the operator shall obtain alternate coverage within 210 days after the close of the financial reporting year.

(m) If the operator fails to obtain alternate coverage within the times specified in ~~sections 111(k)~~ or (l), the operator shall notify the CIWMB by certified mail within 10 business days of such failure.

(n) A local government financial test may be combined with another payment mechanism to assure the amount of required coverage specified in ~~sections §§22211 and 22221~~ of Subchapter 2.

**Note:**

**Authority cited:**

*Sections 40502 and 43601.5, Public Resources Code.*

**References:**

*Sections 43500 through 43610.1, Public Resources Code, Part 258.74(f) and (h), Title 40 Code of Federal Regulations.*

#### **22249.5. CIWMB - Local Government Guarantee.**

(a) The guarantor shall be a local government which meets the requirements of the Local Government Financial Test under ~~section §22249~~ of this Article based on the guarantor's audited year-end financial statements.

(b) The guarantee shall be worded and completed as specified by form CIWMB 113(~~7/98~~ 2/05), which is incorporated by reference.

(c) When the guarantee specifies coverage for postclosure maintenance costs, the terms shall also specify:

(1) If the operator fails to perform postclosure maintenance in accordance with the applicable approved postclosure maintenance plan when required to do so, the guarantor shall either:

(A) Perform, or pay a third party to perform, postclosure maintenance in accordance with the applicable approved postclosure maintenance plan; or

(B) Establish and fund a trust fund as specified in ~~section §22240~~ of this Article, in the name of the operator in the amount of the applicable current postclosure maintenance cost estimate covered by the guarantee; and/or

(d) When the guarantee specifies coverage for corrective action costs, the terms shall also specify:

(1) If the operator fails to perform corrective action in accordance with the applicable approved corrective action plan when required to do so, the guarantor shall either:

(A) Perform, or pay a third party to perform, corrective action in accordance with the applicable approved corrective action plan; or

(B) Establish and fund a trust fund as specified in ~~section §22240~~ of this Article, in the name of the operator in the amount of the applicable current corrective action cost estimate covered by the guarantee; and/or

(e) The guarantee will remain in force unless the guarantor fails to meet the requirements of ~~sections §§22249 and/or 22249.5~~ of this Article, or wishes to terminate the guarantee. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the operator and the CIWMB, as evidenced by return receipts.

(1) The guarantor shall send a notice of cancellation by certified mail to the operator, and the CIWMB, within 180 days after the end of that financial reporting year. The guarantee shall terminate no less than 120 days after the date that the operator and the CIWMB received the notice of cancellation, as evidenced by the return receipts.

(2) If the guarantee is cancelled, the operator shall establish alternate assurance as specified in ~~section §22228~~ of Article 1 of this Subchapter within 60 days after such notice.

(3) If the operator fails to provide alternate financial assurance:

(A) The operator shall send notice of such failure by certified mail to the guarantor, and the CIWMB, within the same 60 day period; and

(B) The guarantor must provide alternate assurance as specified in ~~section §22228~~ of Article 1 of this Subchapter within 60 days after the date of the operator's notice.

(f) The CIWMB may require updated financial statements at any time from a guarantor. If the CIWMB finds that the guarantor no longer meets the local government financial test or guarantee requirements of ~~sections §§22249 and/or 22249.5~~ of this Article, the CIWMB



shall notify the guarantor and operator of such finding by certified mail. If the CIWMB notifies the guarantor and the operator that the guarantee is no longer acceptable, the operator and guarantor shall comply with ~~section §~~22249.5 (e) (2) and (3) of this Article.

(g) Only a guarantee for payment, rather than performance of work, may be combined with another payment mechanism to assure the amount of required coverage specified in ~~sections §§~~22206, 22211, 22216, and/or 22221 of Subchapter 2.

**Note:**

**Authority cited:**

*Sections 40502 and 43601.5, Public Resources Code.*

**References:**

*Sections 43500 through 43610.1, Public Resources Code, Part 258.74(f) and (h), Title 40 Code of Federal Regulations.*

#### **22251. CIWMB - Liability Insurance. (T14:§18236)**

(a) The issuer of the insurance policy shall be an insurer that, at a minimum, is licensed by the California Department of Insurance to transact the business of insurance in the State of California as an admitted carrier.

(b) If coverage is not available as specified in ¶(a), the operator may seek coverage by an insurer which, at a minimum, shall be eligible to provide insurance as an excess or surplus lines insurer in California.

(c) If coverage is obtained as described in ¶(b), the insurance shall be transacted by and through a surplus line broker currently licensed under the regulations of the California Department of Insurance and upon the terms and conditions prescribed in the California Insurance Code (CIC), Division 1, Part 2, Chapter 6.

(d) The CIWMB or its designee may object to the use of any insurer at anytime, whether before or after placement of coverage based on information obtained from, but not limited to, the Surplus Line Association of California, Best's Insurance Reports, and/or the Non-Admitted Insurers Quarterly List.

(e) Each insurance policy shall be either:

(1) Evidenced by a certificate of liability insurance established by using form CIWMB 107 (~~4/96-12/01~~), which is incorporated by reference; or

(2) Amended and evidenced by a liability insurance endorsement established by using form CIWMB 108 (~~4/96-12/01~~), which is incorporated by reference.

**Note:**

**Authority cited:**

*Section 40502 and 43040, Public Resources Code.*

**Reference:**

*Sections 43040 and 43103, Public Resources Code.*

#### **22252. CIWMB - Self-Insurance and Risk Management. (T14:§18237)**

(a) To use the self-insurance and risk management mechanism an operator shall:

(1) Be a public entity;

(2) Be self-insured;

(3) Employ a risk manager;

(4) Have an active safety and loss prevention program that seeks to minimize the frequency and magnitude of third party damages caused by accidental occurrences and other self-insured losses;

(5) Have procedures for and a recent history of timely investigation and resolution of any claims for third party damages caused by accidental occurrences and other self-insured losses; and

(6) Satisfy any other reasonable conditions that the CIWMB determines are needed to ensure that the assured amount of funds shall be available in a timely manner.

(b) This coverage shall be demonstrated by using form CIWMB 109 (~~4/96-12/01~~), which is incorporated by reference.

**Note:**

**Authority cited:**

*Section 40502 and 43040, Public Resources Code.*

**Reference:**

Sections 43040 and 43103, *Public Resources Code*.

**22253. CIWMB - Insurance and Environmental Fund. (T14:§18240)**

(a) To be eligible to use this mechanism to demonstrate financial responsibility for compensating third parties for bodily injury and property damage, the operator shall fulfill the requirements of ~~sections 111~~(a) through (e) of this section no later than July 2, 1992.

(b) The operator shall submit a signed certification to the CIWMB on form CIWMB 110 (12/01), which is incorporated by reference; and

(c) The operator shall submit certification of coverage to demonstrate the establishment and maintenance of comprehensive general liability insurance coverage with limits in at least the amounts specified in Article 3 of Subchapter 2 of this Chapter. This insurance must conform to the requirements of ~~section 22251~~(a - d) and/or ~~section 22252~~(a); and

(d) The operator shall demonstrate the establishment of an environmental liability fund, which shall be fully funded, as described before July 2, 1997. This means that the operator shall make the initial payment as described in 11(d)(3) by July 2, 1992 and subsequent payments as described in ~~section 11~~(d)(4) on July 1st of the following years: 1993, 1994, 1995, 1996, and 1997.

(1) The environmental liability fund shall have a trustee that is authorized to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The environmental liability fund shall be established by using form CIWMB 111 (12/01), which is incorporated by reference.

(3) The funding of the environmental liability fund shall be initiated with a payment of \$200,000 or a payment that is at least equal to the applicable aggregate liability coverage amount specified in Article 3 of Subchapter 2 of this Chapter, divided by 5, which is the maximum number of years in the pay-in period.

(4) On each anniversary date of July 1, the minimum payment shall be determined by this formula:

$$\text{Minimum Payment} = \frac{\text{AC} - \text{CV}}{\text{Y} + 1},$$

where **AC** is the aggregate coverage required, **CV** is the current value of the trust fund and **Y** is the number of years remaining in the pay-in period.

(5) The operator may accelerate payments into the environmental liability fund. However, the value of the environmental liability fund shall be maintained at no less than the value that the environmental fund would have, if payments were made as specified in 11(d)(3) and 11(d)(4).

(6) If the value of the environmental liability fund becomes greater than the total amount of the applicable aggregate liability coverage, the operator may request in writing that the CIWMB authorize the release of the excess funds. The CIWMB shall review the request within 90 days of receipt of the request. If any excess funds are verified, the CIWMB shall instruct the trustee to release the funds.

(e) The operator may substitute any alternate financial assurance mechanism(s), as identified in ~~section 22227~~, for the Insurance and Environmental Fund mechanism.

**Note:**

**Authority cited:**

Section 40502 and 43040, *Public Resources Code*.

**Reference:**

Sections 43040 and 43103, *Public Resources Code*.